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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

The Matter of)
)
Amendment of Section 2.106 of the)
Commission's Rules to Allocate)
Spectrum at 2 GHz for Use)
by the Mobile-Satellite Service)

ET Docket No. 95-18

DOCKET FILE COPY ORIGINAL

To: The Commission

JOINT REPLY COMMENTS
OF
UNITED STATES SUGAR CORPORATION
AND
WACKENHUT CORPORATION

United States Sugar Corporation ("U.S. Sugar") and Wackenhut Corporation (sometimes hereinafter referred to as "Joint Incumbents"), by their attorneys and pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"), hereby respectfully submit these Joint Reply Comments in response to the Comments filed in this proceeding on May 5, 1995 that addressed issues raised in the Commission's Notice of Proposed Rule Making ("Notice")^{1/} that looks toward dedicating spectrum in the 2.1 GHz range for new Mobile Satellite Services ("MSS").

^{1/} 60 Fed. Reg. 11644 (March 2, 1995). The date for filing Reply Comments in this proceeding was extended from June 6, 1995 to June 21, 1995 by Order of the Commission (May 31, 1995).

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I. PRELIMINARY STATEMENT

1. United States Sugar Corporation (U.S. Sugar) is America's largest producer of sugar cane, and one of the country's leading diversified, privately-held agricultural firms. Its primary business interests, other than sugar cane production and processing raw sugar through its subsidiaries, include the growing, cultivation, harvesting and processing of citrus fruits and the operation of a short line railroad. To a lesser extent, U.S. Sugar is also a manufacturer of plastics. All of the company's operations are situated in South Central Florida. From its headquarters in Clewiston, Florida, U.S. Sugar maintains 180,000 acres of sugar cane and citrus groves in Hendry, Glades, and Palm Beach Counties.

2. U.S. Sugar owns and operates a 96-channel, analog Private Operational-Fixed Microwave Service ("POFS") system authorized by the Commission to utilize channels from the bands 2110-2145 MHz and 2165-2200 MHz. This five hop system stretches from the headquarter offices in Clewiston to West Palm Beach. Several of the system's relay sites are colocated with key U.S. Sugar facilities, including the installations at Clewiston, South Bay, and Bryant Mill. The site and tower for station WHI 550 was developed by U.S. Sugar specifically for this communications facility.

3. U.S. Sugar utilizes this POFS system for internal communications that are essential to the management of its far-flung operations. These include the dispatch of personnel, equipment and supplies required in the cane fields and citrus groves. This system is also used for external communications to access PBX facilities that are connected to the public switched telephone network. Specific voice applications include PBX tie trunks, PBX foreign exchange trunks, off-premise stations, and radio remote control. Data applications use each channel for a composite link between concentrators; these normally support up to 16 data devices per channel. The system is flexible enough to permit changes based upon U.S. Sugar's prevailing needs. Currently, data applications approximate 20% of the system configuration.

4. Wackenhut Corporation ("Wackenhut") is a leader in providing security protection for persons and commercial, public and private property. Wackenhut employs over 45,000 employees and maintains over 100 offices nationwide. In its areas of operation, Wackenhut is frequently requested to perform a role traditionally reserved to police forces. In South Florida, these duties include protection of the public transportation systems of Miami (MetroRail) and Palm Beach-Broward Counties (TriRail), Florida. In this public

security role, Wackenhut regularly detains persons for crimes such as robbery, theft, assault, and fare evasion. In addition, Wackenhut provides specialized protection for private citizens, including business executives and other individuals who may be the target of criminal acts such as kidnapping, burglary, and assault. In 1994, Wackenhut officers detained over 500 individuals who were subsequently arrested by police in Broward, Dade, and Palm Beach Counties.

5. To protect the public and perform these citizen arrests, Wackenhut employs a highly-trained, experienced force of 2,000 officers in South Florida alone; most Wackenhut officers are former police officers and former United States military personnel. These personnel utilize an 800 MHz mobile radio system that is integrated with Wackenhut's POFS to provide communications with a central dispatch center. This POFS, also authorized in the bands 2110-2145 MHz and 2165-2200 MHz, supports several critical functions, including status reporting, man-down alert response, and alarm response.

6. Wackenhut's POFS system also serves as a redundant telecommunications link, so that if commercial telephone service is lost, Wackenhut personnel will still have contact

with the central dispatch center and other safety officials when they need it most. For example, in the aftermath of Hurricane Andrew, Wackenhut brought in hundreds of officers from other areas of the country to support crucial safety operations. Without its POFS system, successful operations would have been impossible in light of the tremendous damage inflicted by the storm.

7. Virtually all of Wackenhut's annual \$45 million revenue in South Florida is contractually tied to its POFS system. Wackenhut uses its POFS capability as a constant lifeline for its personnel and for the individuals they protect. Wackenhut officials regularly utilize an emergency panic button when they are in trouble. This panic button permits the central dispatch center to determine the sender, to fix his or her exact location, and to dispatch assistance. In summary, Wackenhut's business is to protect the public and its own personnel against harm and to apprehend suspects for police arrest; these vital tasks could not be performed without Wackenhut's POFS capability.

8. U.S. Sugar and Wackenhut submit these Joint Reply Comments because of their concern that the Commission and certain MSS proponents do not understand nor appreciate the vital function served by Private Operational-Fixed Microwave

Service systems authorized in the 2.1 GHz band. In addition to serving the broader public interest, both of these POFS systems are depended upon by thousands of U.S. Sugar and Wackenhut workers for the performance of their jobs in a safe and efficient manner. Should these POFS systems be displaced for any reason, they will have to be replaced with other facilities. Accordingly, the Joint Incumbents appreciate this opportunity to submit the following Joint Reply Comments.

II. JOINT REPLY COMMENTS

9. The Joint Incumbents believe that the Commission's proposal to facilitate yet another emerging technology is premature. The Joint Incumbents are not convinced that additional spectrum is needed for MSS at this time. The Comments filed in this proceeding fall far short of establishing any demonstrable need for additional commercial mobile communication services. Nonetheless, if the Commission ultimately determines that additional MSS is needed, the Joint Incumbents urge the agency to first coordinate any MSS allocation with action taken this fall at the upcoming World Radiocommunication Conference ("WRC-95").^{2/}

^{2/} See, e.g., Southwestern Bell Mobile Systems Comments at 1. Even MSS proponents believe that the Commission's
(continued...)

10. Should the Commission adopt its proposal to reallocate the bands 2110-2145 MHz and 2165-2200 MHz for MSS, the Joint Incumbents strongly urge employment of the plan to require MSS licensees to fully compensate displaced POFS incumbents and to provide them with comparable facilities. Both U.S. Sugar and Wackenhut strongly support the Commission's plan to institute a two-year voluntary negotiation period followed by a one-year involuntary negotiation period for incumbents and MSS licensees to reach an appropriate reimbursement agreement. They stress that they will need as much time as possible to make this transition in light of the important safety and commercial needs fulfilled by their POFS systems. It is only fair that the transition plan provide for the return of dissatisfied incumbents to their original POFS systems within their first year of relocation. Furthermore, the Joint Incumbents request that the Commission permit incumbent licensees to retain primary status until they have operated for one year with their new facilities.

11. MSS licensees must reimburse 2.1 GHz POFS incumbents for the costs of relocating their

2/ (...continued)

proposal is premature and that any Commission action should be deferred pending the results of WRC-95. Constellation Communications, Inc. Comments at 2, 4; Comsat Comments at ii, 3; Loral Qualcomm Comments at ii.

telecommunications facilities. MSS is a new telecommunications technology. The Commission is therefore correct to apply the same principles here that it developed in its previous proceeding for new telecommunications technologies (ET Docket No. 92-9). In ET Docket No. 92-9, the Commission thoroughly addressed the same issues now raised by MSS proponents concerning compensation of relocated incumbents and concluded that:

[I]ncumbents subject to involuntary relocation will have the entire relocation cost paid by the emerging technology service provider. They will not incur the cost of the relocation, and in fact will benefit to the degree that aging equipment using older technology may be replaced with new equipment using state-of-the-art technology.

Third Report and Order, ET Docket No. 92-9, at ¶ 16.

III. CONCLUSION

12. Now, after this issue has been so fully considered by the Commission and resolved, it is unseemly for the MSS proponents to ask the Commission to change the fundamental rules of the game. Instead, the Joint Incumbents believe the Commission should hold to its course and require MSS licensees to fully reimburse incumbent 2.1 GHz POFS users for their relocation costs. In order to ensure their compliance with the Commission's clear policy, the Joint Incumbents urge the Commission to adopt the proposal made by the Society of Broadcast Engineers ("SBE") which would

require MSS licensees to post a performance bond.^{3/} In this way, if an MSS company becomes insolvent or for other reasons refuses to pay once an incumbent has relocated, the incumbent would be assured of payment for its relocation costs.

WHEREFORE, THE PREMISES CONSIDERED, United States Sugar Corporation and Wackenhut Corporation together respectfully submit their foregoing Joint Reply Comments and request that the Federal Communications Commission take action in a manner consistent with the views expressed herein.

Respectfully submitted,

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AND THE WACKENHUT CORPORATION**

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^{3/} SBE Comments at 7